

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 006943.00310)

In the Application of:)	
)	
Lee, et al.)	
)	Examiner: Chawla, Jyoti
Serial No.: 10/628,420)	
)	Group Art Unit: 1794
Filing Date: July 29, 2003)	
)	Confirmation No. 6264
For: Method to improve the stability of)	
lemon/lime flavored beverages)	

**APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR
RECONSIDERATION UNDER 37 CFR 1.705(b)**

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

1. This is a request for reconsideration of the patent term adjustment of 440 days indicated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) that was identified in the Determination mailed April 3, 2009 for the above-referenced application. It is respectfully requested that Applicants be granted a minimum patent term adjustment of 675 days which includes the term to be added based on the sum of the number of days following the 14 Month Delay and the number of days following the Three Year Delay, minus the number of days of Applicant Delay for the above-referenced application.

2. Applicants submit herewith a "Statement Under 37 CFR 1.705(b)(2)."

An "Application for Patent Term Adjustment Including Request for Reconsideration Under 37 CFR 1.705(b)" was filed June 16, 2009 (hereinafter "the PTA Application of June 16, 2009"). In a communication mailed July 13, 2009, entitled "On Application For Patent Term Adjustment," the Office of Petitions stated dismissed the PTA Application of June 16, 2009

Application “as PREMATURE.” The Office of Petitions stated that “the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed)”. The Office of Petitions stated that “the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.” The Office of Petitions acknowledged “submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b)” and stated that “[a]ny request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).”

Applicants respectfully submit that decision of the Office of Petitions is contrary to the rule set forth in 37 CFR 1.705 (b), which provides:

“...An application for patent term adjustment under this section must be filed no later than the payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance.”

Applicants believe that the PTA Application of June 16, 2009 was not premature because it was filed “no later than the payment of the issue fee” on July 2, 2009, and was not “filed earlier than the date of mailing of the notice of allowance” on April 3, 2009.

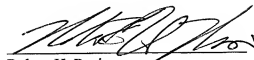
In view of the facts above, Applicants respectfully ask that the Office of Petitions to reconsider its position that the PTA Application of June 16, 2009 was “PREMATURE” or in the alternative, that the present Application need not require a payment under 37 CFR 1.18(e) since this fee was already paid with the PTA Application of June 16, 2009. If, however, the Office of Petitions continues to deem that a fee under 37 CFR 1.18(e) is still required in connection with the present Application, the Commissioner is authorized to charge the fee set forth in 37 CFR 1.18(e) (\$200.00) to our Deposit Account No. 19-0733, and to charge any additional fees or credit any overpayments to our Deposit Account No. 19-0733.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: August 13, 2009

By:

A handwritten signature in black ink, appearing to read 'R. Resis', written over a horizontal line.

Robert H. Resis
Registration No. 32,168
10 S. Wacker Dr., Suite 3000
Chicago, IL 60606
Tel: (312) 463-5000
Fax: (312) 463-5001

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Filing Date: July 29, 2003)	
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For: Method to improve the stability of)	
lemon/lime flavored beverages)	

STATEMENT UNDER 37 CFR 1.705(b)(2)

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

1. This statement is respectfully submitted in support of the "Application for Patent Term Adjustment Including Request for Reconsideration Under 37 CFR 1.705(b)" for the above-referenced application. In view of the following, it is respectfully requested that Applicants be granted a minimum patent term adjustment of 675 days.

2. The patent term adjustment on the Issue Notification is 440 days (a copy of the PTAS Sheet is submitted herewith as Exhibit A). This determination of 440 days is in error in that pursuant to 35 U.S.C. 154(b) the Office failed to take certain action within the time frame specified in 37 CFR 1.702(a) **and** failed to issue a patent within three years of the actual filing date of the above-referenced application in accordance with 37 CFR 1.702(b).

Pursuant to 37 CFR 1.703(a), Applicants are entitled to a period of patent term adjustment due to the failure by the Office to mail an action under 35 U.S.C. 132 not later than 14 months after the actual filing date (i.e., by September 29, 2004) (hereinafter "14 Month

Delay"). As the Office failed to mail an action under 35 U.S.C. 132 until March 27, 2006, Applicants are entitled to a period of patent term adjustment beginning on the day after the date that is 14 months after the date on which the above-referenced application was filed under 35 U.S.C. 111(a), i.e., September 29, 2004, and ending on the date of mailing of an action under 35 U.S.C. 132, i.e., March 27, 2006. Accordingly, the period of patent term adjustment due to the 14 Month Delay by the Office is 544 days, which is in agreement with the period calculated by the Office on the PTAS Sheet (Exhibit A, page 1).

In addition to the patent term adjustment due to the 14 Month Delay, pursuant to 37 CFR 1.703(b) Applicants are entitled to a period of patent term adjustment due to examination delay from the number of days in the period beginning on the day after the date that is three years after the date on which the above referenced application was filed under 35 U.S.C. 111(a), i.e., July 29, 2006, and ending on the date a patent issued, i.e. August 11, 2009, which was after the Notice of Allowance mailed April 3, 2009, but not including any time consumed by continued examination of the application under 35 U.S.C. 132(b), (hereinafter "Three Years Delay"). As the issue date was after July 29, 2006, and there being a request for continued examination mailed March 21, 2007, Applicants have calculated a minimum period of Three Years Delay of 235 days based on the period of July 29, 2006 to March 21, 2007.

As set forth in 37 CFR 1.703(f), Applicants are entitled to a period of patent term adjustment equal to the period of examination delays based on the grounds set forth in 37 CFR 1.702 reduced by the period of time equal to the period of time during which Applicants failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR 1.704 (hereinafter "Applicant Delay"). With respect to the above-referenced application, the total period of examination delays is the sum of the period of 14 Month Delay (between September 29, 2004 and March 27, 2006), i.e., 544 days and the minimum period of Three Years Delay (235 days), or 779 days, to the extent these periods of delay are not overlapping. As the period of 14 Month Delay ended on March 27, 2006, prior to the first day of the period of Three Years Delay, i.e., July 29, 2006, Applicants submit that these periods are not overlapping. To calculate the period of patent term adjustment, the total period of examination delay is reduced by the period of Applicant Delay, which the USPTO has calculated as a period of 104 days (see Exhibit A).

Accordingly, Applicants submit that the correct patent term adjustment for the above-referenced application is at least **675 days**, which is the difference between the total period of examination delay (779 days) and the period of Applicant Delay (104 days). **As such, the correct patent term adjustment upon issuance of a patent is expected to be the sum of 675 days (as calculated herein).**

3. The factual bases for the above adjustment are set forth as follows:

A. Examination Delays Pursuant to 37 CFR 1.702 and 1.703

Pursuant to 37 CFR 1.703(f), the period of adjustment of the term of the patent under 1.702 is the sum of the periods of examination delay calculated under subparagraphs (a)-(e), to the extent that such periods are not overlapping, less the sum of the periods calculated under 1.704 (the period of Applicant Delay). In the above-referenced application, Applicants are entitled to a period of examination delay equal to the sum of the periods of delay under 1.703 (a) and (b) for the reasons set forth below.

i. "14 Month Delay" Pursuant to 1.703(a)(1)

In accordance 37 CFR 1.703(a)(1), Applicants are entitled to a period of patent term adjustment due to the failure by the Office to mail an action under 35 U.S.C 1.32 not later than 14 months after the actual filing date (i.e. September 29, 2004). As shown in the PTAS Sheet (Exhibit A, page 2), the Office failed to mail an action until March 27, 2006. As such, Applicants are entitled to a period of patent term adjustment beginning September 30, 2004 and ending on March 27, 2006, the date of mailing of the Non-Final Rejection by the Office. Accordingly, the period of patent term adjustment due to the 14 Month Delay by the Office is **544 days**, as is correctly shown on the PTAS Sheet (Exhibit A, page 1).

ii. "Three Years Delay" Pursuant to 37 CFR 1.703(b)

The Office did not comply with the requirement of 35 U.S.C. 154(b) and 37 CFR 1.702(b), which requires issuance of a patent within 3 years after the date on which the application was filed under 35 U.S.C. 111(a). The patent issued August 11, 2009. Since a request for continued examination was filed March 21, 2007, the issue date was more than 3 years and **235 days** (July 29, 2006 to March 21, 2007) after the above-referenced application was

filed under 35 U.S.C. 111(a). As the exclusionary period set forth in 37 CFR 1.702(b) applies to the instant application due to the filing of a request for continued examination on March 21, 2007, and in accordance with 37 CFR 1.703, a minimum period of examination delay is calculated to be 235 days (beginning July 30, 2006 and ending March 21, 2007). Accordingly, the entire period of Three Years Delay is the minimum period of the number of days from July 30, 2006 to the day of filing of the request for continued examination on March 21, 2007, i.e., 235 days.

iii. Total Examination Delay Pursuant to 37 CFR 1.703(f)

As set forth in 37 CFR 1.703(f), the period of examination delay based on the grounds set forth in 37 CFR 1.702 is the sum of the period of 14 Month Delay (544 days) and the minimum period of Three Years Delay (235 days), or 779 days, to the extent these periods of delay are not overlapping. As the period of 14 Month Delay ended on March 27, 2006, prior to the first day of the period of Three Years Delay, i.e., July 30, 2006, Applicants submit that no days are overlapping.

B. "Applicant Delay" Pursuant to 37 CFR 1.704

Pursuant to 37 CFR 1.704 the period of adjustment of the term of the patent due to examination delay is reduced by the period of Applicant Delay. As indicated on the PTAS Sheet (Exhibit A), the Office has calculated a period of Applicant Delay of 104 days.

C. "Calculation of Correct Patent Term Adjustment Pursuant to 37 CFR 1.702(f)

As set forth in 37 CFR 1.703(f), Applicants are entitled to a period of patent term adjustment equal to the period of examination delays reduced by the period of Applicant Delay. Therefore, Applicants submit that the correct patent term adjustment for the above-referenced application is **at least 675 days**, which is the difference between the total period of examination delay (779 days) less the period of Applicant Delay (104 days).

4. In accordance with 37 CFR 1.705(b)(2)(iii), Applicants submit that the pending patent corresponding to this application is not subject to a terminal disclaimer.

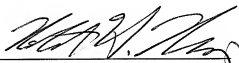
In view of the foregoing, it is respectfully requested that this Application for Patent Term Adjustment be favorable considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a minimum patent term adjustment of 675 days.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: August 13, 2009

By:


Robert H. Resis
Registration No. 32,168
10 S. Wacker Dr., Suite 3000
Chicago, IL 60606
Tel: (312) 463-5000
Fax: (312) 463-5001

10/628,420	METHOD TO IMPROVE THE STABILITY OF LEMON/LIME FLAVORED BEVERAGES	08-13-2009::15:52:17
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/628,420

Filing or 371(c) Date:	07-29-2003	USPTO Delay (PTO) Delay (days):	544
Issue Date of Patent:	08-11-2009	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	104
Post-Issue Petitions (days):	+0	Total PTA (days):	440
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
07-22-2009	PTA 36 Months		
08-11-2009	Patent Issue Date Used in PTA Calculation		
07-16-2009	Dispatch to FDC		
07-13-2009	Mail-Petition Decision - Dismissed		
07-13-2009	Petition Decision - Dismissed		
07-06-2009	Application Is Considered Ready for Issue		
07-02-2009	Issue Fee Payment Verified		
07-02-2009	Issue Fee Payment Received		
06-16-2009	Petition Entered		
04-03-2009	Mail Notice of Allowance		
03-31-2009	Document Verification		
03-31-2009	Notice of Allowance Data Verification Completed		
03-27-2009	Examiner's Amendment Communication		
03-01-2009	Date Forwarded to Examiner		
03-01-2009	Date Forwarded to Examiner		
02-25-2009	Request for Continued Examination (RCE)		
03-01-2009	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
02-25-2009	Workflow - Request for RCE - Begin		
02-06-2009	Mail Advisory Action (PTOL - 303)		
02-04-2009	Advisory Action (PTOL-303)		
01-27-2009	Date Forwarded to Examiner		
01-26-2009	Amendment after Final Rejection		
11-26-2008	Mail Final Rejection (PTOL - 326)		
11-24-2008	Final Rejection		
09-09-2008	Date Forwarded to Examiner		
08-01-2008	Response after Non-Final Action		
05-02-2008	Mail Non-Final Rejection		
04-28-2008	Non-Final Rejection		
02-26-2008	Date Forwarded to Examiner		
02-26-2008	Date Forwarded to Examiner		

02-25-2008	Request for Continued Examination (RCE)	
02-26-2008	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	
02-25-2008	Workflow - Request for RCE - Begin	
01-29-2008	Mail Advisory Action (PTOL - 303)	
01-28-2008	Advisory Action (PTOL-303)	
01-20-2008	Date Forwarded to Examiner	
01-17-2008	Amendment after Final Rejection	
01-09-2008	Mail Final Rejection (PTOL - 326)	
12-10-2007	Final Rejection	
10-04-2007	Case Docketed to Examiner in GAU	
09-27-2007	Date Forwarded to Examiner	
09-20-2007	Response after Non-Final Action	
09-13-2007	Mail Examiner Interview Summary (PTOL - 413)	
03-08-2007	Examiner Interview Summary Record (PTOL - 413)	
06-21-2007	Mail Non-Final Rejection	
05-29-2007	Non-Final Rejection	
03-22-2007	Date Forwarded to Examiner	
03-22-2007	Date Forwarded to Examiner	
03-22-2007	Date Forwarded to Examiner	
03-21-2007	Request for Continued Examination (RCE)	21
03-22-2007	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	⬆
03-21-2007	Request for Extension of Time - Granted	⬆
03-22-2007	Correspondence Address Change	⬆
03-23-2007	Change in Power of Attorney (May Include Associate POA)	⬆
03-21-2007	Workflow - Request for RCE - Begin	⬆
03-09-2007	Mail Advisory Action (PTOL - 303)	⬆
03-06-2007	Advisory Action (PTOL-303)	⬆
03-01-2007	Date Forwarded to Examiner	⬆
02-26-2007	Amendment after Final Rejection	⬆
11-30-2006	Mail Final Rejection (PTOL - 326)	⬆
11-27-2006	Final Rejection	
09-21-2006	Date Forwarded to Examiner	
09-18-2006	Response after Non-Final Action	83
09-18-2006	Request for Extension of Time - Granted	⬆
06-02-2006	Correspondence Address Change	⬆
03-27-2006	Mail Non-Final Rejection	544
03-06-2006	Non-Final Rejection	⬆
02-13-2004	Information Disclosure Statement considered	⬆
02-02-2006	IFW TSS Processing by Tech Center Complete	⬆
02-02-2006	Case Docketed to Examiner in GAU	⬆

02-13-2004	Reference capture on IDS	⬆
02-13-2004	Information Disclosure Statement (IDS) Filed	⬆
02-13-2004	Information Disclosure Statement (IDS) Filed	⬆
01-03-2006	Miscellaneous Incoming Letter	⬆
01-14-2005	Correspondence Address Change	⬆
01-14-2005	Change in Power of Attorney (May Include Associate POA)	⬆
11-10-2003	Application Return from OIPE	⬆
10-30-2003	Application Return TO OIPE	⬆
10-29-2003	Application Dispatched from OIPE	⬆
10-30-2003	Application Is Now Complete	⬆
10-14-2003	Cleared by OIPE CSR	⬆
09-05-2003	IFW Scan & PACR Auto Security Review	⬆
07-29-2003	Initial Exam Team nn	⬆

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